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| APPLICATION NO.              | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------|-------------|----------------------|---------------------|------------------|
| 10/804,270                   | 03/18/2004  | Patrick J. Cosgrove  | 2422.001            | 7456             |
| 21917                        | 7590        | 09/23/2005           | EXAMINER            |                  |
| MCHALE & SLAVIN, P.A.        |             |                      | MAYO, TARA L        |                  |
| 2855 PGA BLVD                |             |                      | ART UNIT            |                  |
| PALM BEACH GARDENS, FL 33410 |             |                      | PAPER NUMBER        |                  |

3671

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/804,270

Applicant(s)

COSGROVE, PATRICK J.

Examiner

Tara L. Mayo

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-12,14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12,14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: “18” as seen in Figure 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: undefined abbreviations.

On page 4 at line 20, define “EPROM’s.”

On page 5 at line 4, define “LED.”

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 through 3, 5 through 12, 14 and 16 through 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Endres et al. (U.S. Patent No. 5,593,247A).

Endres et al. '247 disclose an integrated lifting system (10) for a boat cradle:  
with regard to claim 1,

wherein the cradle is raised and lowered by motors (11) on the fixed support (3) of a dock and the boat is carried by the cradle (40), said system comprising a level sensing module (col. 8, lines 9 through 12) and a motor control module (110) operatively interconnected, said level sensing module comparing the water line of the boat and the surface of the water, said motor control module determining the direction of the cradle movement (via relays 121 and 123; col. 5, lines 57 through 60) said motor control module adapted to be connected to motors whereby said motor control module energizes the motors to move the cradle and said level sensing module signals said motor control module to stop the motors when the water line and the surface of the water reach a predetermined distance;

with regard to claim 2,

Art Unit: 3671

further comprising a receiver module (107) operatively interconnected to said motor control module, said receiver module including a manual switch (227) for operating said system (col. 6, lines 26 through 31);

with regard to claim 3,

further comprising a transmitter module (104; *also* col. 5, lines 47 through 51) operatively connected to said receiver module, said transmitter module being portable and including manual switches for operating said system, said receiver module accepting input from said transmitter module manual switches and conveying said input to said motor control module; with regard to claim 5,

further comprising said level sensing module having at least one float switch in said control circuit, said float switch activated by a certain water depth (col. 8, lines 9 through 29); with regard to claim 6,

further comprising a storage limit switch (239) operatively connected with said motor control module, said storage limit switch adapted to be attached to the fixed support (col. 6, lines 18 through 25), one of said manual switches commanding a storage position, said one of said manual switches non-responsive with said storage limit switch closed and the cradle in the storage position, said motor control module signaling the motors to raise the cradle with said storage limit switch open (See Figure 8);

with regard to claims 7 and 9,

further comprising another manual switch (237) commanding a launch/retrieve position, said another manual switch non-responsive with the cradle in the launch/retrieve position,

Art Unit: 3671

otherwise said motor control module signaling the motors to raise or lower the cradle to the launch/retrieve position; and

with regard to claims 8 and 10,

a third manual switch (101 or 103) commanding a load/unload position (intermediate the upper and lower limits of the frame), said third manual switch non-responsive with the cradle in the load/unload position, said motor control module signaling the motors to raise the cradle with the cradle below the load/unload position or to lower the cradle with the cradle above the load/unload position.

With regard to claim 1, while Endres et al. '247 do not expressly teach the level sensing module adapted to be mounted on the cradle, the intended use recitation is met because the device shown by Endres et al. '247 has the ability to be mounted on the cradle.

Endres et al. '247 show an integrated lifting system for a vessel, the improvement comprising:

with regard to claim 11,

a motor control module (100) including a control circuit (110) mounted on a fixed support (3) and operatively interconnected to said at least one motor (11), a level sensing module (col. 8, lines 9 through 12) operatively connected to said motor control module, said level sensing module having a switch activated as the water line of the vessel and the surface of the water coincide, said control circuit determining the direction of the cradle (40) movement whereby said motor control module energizes said at least one motor to raise or lower the cradle

Art Unit: 3671

and said level sensing module signals said motor control module to stop said at least one motor when said switch is activated;

with regard to claim 12,

further comprising said cradle adapted to be immersed in water below the water line of the vessel, said cradle adapted to capture a floating vessel, said switch of said level sensing module mounted on said cradle at a position approximately parallel with the water line of said vessel when said vessel is supported by said cradle; and

with regard to claim 14,

further comprising at least one safety switch (237 or 239) operatively connected to said motor control module, when activated said safety switch energizes said motor control module to not accept signals from the level sensing module and disengage said motor.

With regard to claims 16 through 20, the method steps recited therein are inherent to the use of the device disclosed by Endres et al. '247.

### ***Response to Arguments***

5. Applicant's arguments filed 27 June 2005 have been fully considered but they are not persuasive.

In response to Applicant's statements regarding a component aligned with the water line of the vessel and movable with the vessel, the Examiner first notes Applicant's arguments are further limiting than the claims. Specifically, claim 1 recites a level-sensing module comparing the water line of the boat and the surface of the water, the level-sensing module adapted to be

Art Unit: 3671

mounted on the cradle. Endres et al. '247 teach the use of level sensing modules (col. 8, lines 9 through 12) for comparing the water line of the boat and the surface of the water. Regarding Applicant's intended use limitation, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. (*In re Venezia*, 189 USPQ 149 (CCPA 1976)) A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art if the prior art has the capability to do so. See MPEP 2114.

In response to Applicant's statements regarding the required use of a computer to operate the device disclosed by Endres et al. '247, the Examiner contends Applicant's claims do not preclude the use of a computer.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm  
16 September 2005

  
TARA L. MAYO  
PATENT EXAMINER